

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JEAN B.,

Plaintiff,

V.

**COMMISSIONER OF SOCIAL
SECURITY,**

Defendant.

CASE NO. 2:20-CV-0298-DWC

ORDER REVERSING AND REMANDING DEFENDANT'S DECISION TO DENY BENEFITS

Plaintiff filed this action, pursuant to 42 U.S.C. § 405(g), for judicial review of Defendant's denial of Plaintiff's application for supplemental security income ("SSI"). Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73 and Local Rule MJR 13, the parties have consented to have this matter heard by the undersigned Magistrate Judge. *See* Dkt. 2.

After considering the record, the Court concludes the Administrative Law Judge (“ALJ”) erred when he improperly discounted Dr. Raphael Stricker’s opinion. As the ALJ’s error is not harmless this matter is reversed and remanded pursuant to sentence four of 42 U.S.C. § 405(g) to the Commissioner of the Social Security Administration (“Commissioner”) for further proceedings consistent with this Order.

FACTUAL AND PROCEDURAL HISTORY

2 On October 14, 2015, Plaintiff filed an application for SSI, alleging disability as of May
3 17, 2014. *See* Dkt. 8, Administrative Record (“AR”) 13. The application was denied upon initial
4 administrative review and on reconsideration. *See* AR 13. A hearing was held before ALJ C.
5 Howard Prinsloo on November 14, 2018. *See* AR 13. In a decision dated December 19, 2018, the
6 ALJ determined Plaintiff to be not disabled. *See* AR 22. Plaintiff’s request for review of the
7 ALJ’s decision was denied by the Appeals Council, making the ALJ’s decision the final decision
8 of the Commissioner. *See* 20 C.F.R. § 404.981, § 416.1481.

In the Opening Brief, Plaintiff maintains the ALJ erred by improperly: (1) evaluating the medical opinion evidence; and (2) discounting Plaintiff's testimony and the lay witness testimony. Dkt. 10.

STANDARD OF REVIEW

Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social security benefits if the ALJ's findings are based on legal error or not supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)).

DISCUSSION

I. Whether the ALJ properly considered the medical opinion evidence.

19 Plaintiff argues the ALJ improperly discounted Dr. Stricker's opinion. Dkt. 10, pp. 3-11.

In assessing an acceptable medical source, an ALJ must provide "clear and convincing" reasons for rejecting the uncontradicted opinion of either a treating or examining physician.

²² *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995) (citing *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir. 1990)); *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988). When a treating or

1 examining physician's opinion is contradicted, the opinion can be rejected "for specific and
 2 legitimate reasons that are supported by substantial evidence in the record." *Lester*, 81 F.3d at
 3 830-831 (citing *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995)); *Murray v. Heckler*,
 4 722 F.2d 499, 502 (9th Cir. 1983). The ALJ can accomplish this by "setting out a detailed and
 5 thorough summary of the facts and conflicting clinical evidence, stating his interpretation
 6 thereof, and making findings." *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citing
 7 *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989)).

8 Dr. Stricker, Plaintiff's treating Lyme disease and Babesiosis physician, completed a
 9 medical opinion form describing Plaintiff's limitations caused by her conditions. AR 831-833.
 10 He indicated Plaintiff's diagnoses were Lyme disease and Babesiosis. AR 831. Dr. Stricker
 11 opined Plaintiff's complaints of excessive fatigue, cognitive impairment/brain fog, tingling and
 12 stiffness in her upper and lower extremities, muscle pain at multiple sites, and extreme weakness
 13 are consistent with her diagnoses. AR 831-832. Dr. Stricker found Plaintiff would have problems
 14 staying on task for a two-hour period more than once a day, and that those lapses would last for
 15 an hour or more. AR 832. He also opined Plaintiff would miss work more than once a week due
 16 to her conditions. AR 833.

17 The ALJ discussed Dr. Stricker's opinion and gave it minimal weight for three reasons:
 18 (1) Dr. Stricker did not provide any objective basis or explanation for the limitations he assessed;
 19 (2) it is inconsistent with Dr. Stricker's own treatment records; and (3) it is inconsistent with
 20 Plaintiff's ability to complete her college coursework and babysit "in a presumably responsible
 21 manner[.]"¹ AR 19-20.

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23 ¹ The Court notes the ALJ may have discounted Dr. Stricker's opinion because it is inconsistent with the
 24 overall evidence and because Dr. Stricker relied on Plaintiff's subjective reports, which are not wholly reliable. AR
 19-20. Defendant does not argue, nor does the Court find, these two additional reasons are valid to discount Dr.

1 The ALJ first discounted Dr. Stricker's opinion because he did not provide any objective
 2 basis or explanation for the limitations he assessed. AR 19. An ALJ may "permissibly reject" a
 3 physician's reports "that [do] not contain any explanation of the bases of their conclusions."
 4 *Molina v. Astrue*, 674 F.3d 1104, 1111-1112 (9th Cir. 2012) (internal quotation marks
 5 omitted) (quoting *Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996)). But a physician's
 6 opinion cannot be rejected if the opinion is supported by treatment notes. *Esparze v. Colvin*,
 7 631 Fed. App'x 460, 462 (9th Cir. 2015). Here, treatment notes support Dr. Stricker's
 8 opinion. For example, in one instance, a scan of Plaintiff's brain "showed a great deal of
 9 inflammation" due to Lyme disease. AR 472; *see also* AR 444. Further, the ALJ himself
 10 acknowledged Dr. Stricker indicated his opinion was supported by lab testing and a brain
 11 scan. *See* AR 19, citing AR 831. Additionally, the record contains multiple lab tests showing
 12 Plaintiff tested positive for Lyme disease and Babesiosis. *See* AR 590, 788, 792. The record
 13 also contains evidence indicating Plaintiff had problems with concentrating, cognition, and
 14 stamina.² *See, e.g.*, AR 477, 586, 590, 593. Accordingly, because Dr. Stricker's opinion is
 15 supported by treatment notes, the ALJ's first reason for discounting Dr. Stricker's opinion is
 16 not specific and legitimate and supported by substantial evidence.

17 Second, the ALJ discounted Dr. Stricker's opinion because it contradicts his own
 18 treatment records. AR 20. "A physician's opinion can be discredited based on contradictions
 19

20 Striker's opinion. *See* Dkt. 13, pp. 5-11. As such, the Court will not discuss these reasons for giving minimal weight
 21 to Dr. Stricker's opinion.

22 Plaintiff argues "[i]t is noteworthy that the ALJ believed that the record's absence of 'any documented
 23 testing/examination of the claimant's concentration, cognition, or stamina' is significant." Tr. 19. Plaintiff
 24 mischaracterizes the ALJ's analysis. The ALJ did not find the record was ambiguous or inadequate to allow for
 proper evaluation. *See Tonapetyan v. Halter*, 242 F.3d 1144, 1150 (9th Cir. 2001) (finding that an ALJ must further
 develop the record if the evidence is ambiguous or the ALJ finds the record "is inadequate to allow for proper
 evaluation of the evidence"). Rather, the ALJ found Dr. Stricker's notes "do not contain any documented
 testing/examination of [Plaintiff's] concentration, cognition, or stamina[.]" AR 19. Accordingly, Plaintiff's
 argument is without merit.

1 between the opinion and the physician's own notes." *Buck v. Berryhill*, 869 F.3d 1040, 1050
 2 (9th Cir. 2017). But when discounting an opinion, the ALJ "must provide some reasoning in
 3 order for [the court] to meaningfully determine whether the ALJ's conclusions were supported
 4 by substantial evidence[.]" *Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1103 (9th
 5 Cir. 2014) (citation omitted). Here, the ALJ failed to provide any reasoning after claiming Dr.
 6 Stricker's opinion is contradicted by his own treatment notes. *See AR 20*. Without more
 7 information or clarification regarding which treatment notes contradict Dr. Stricker's opinion
 8 and why they contradict the opinion, the Court is unable to determine whether the ALJ's
 9 reason is supported by substantial evidence. *See Blakes v. Barnhart*, 331 F.3d 565, 569 (7th
 10 Cir. 2003) ("We require the ALJ to build an accurate and logical bridge from the evidence to
 11 her conclusions so that we may afford the claimant meaningful review of the SSA's ultimate
 12 findings"). Accordingly, the ALJ's third reason for discounting Dr. Stricker's opinion is not
 13 specific and legitimate and supported by substantial evidence.

14 Third, the ALJ discounted Dr. Stricker's opinion because it is inconsistent with Plaintiff's
 15 ability to complete her college coursework and keep babysitting "in a presumably responsible
 16 manner[.]" AR 20. Courts have repeatedly stated that "a person's ability to engage in personal
 17 activities such as cooking, cleaning, and hobbies does not constitute substantial evidence that
 18 he or she has the functional capacity to engage in substantial gainful activity." *Kelley v.*
 19 *Callahan*, 133 F.3d 583, 589 (8th Cir. 1998); *see also O'Connor v. Sullivan*, 938 F.2d 70, 73
 20 (7th Cir. 1991) ("The conditions of work are not identical to those of home life"). Plaintiff's
 21 ability to complete her college coursework and babysit does not necessarily show she could
 22 "perform an eight-hour workday, five days per week, or an equivalent work schedule." *See*
 23 Social Security Ruling ("SSR") 96-8p, 1996 WL 374184, at *1. Moreover, the ALJ failed to
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1 explain how Plaintiff’s ability to complete her college coursework and babysit shows she could
 2 sustain a full-time work schedule. *See Mulanax v. Comm’r of Soc. Sec. Admin.*, 293 Fed. Appx.
 3 522, 523 (9th Cir. 2008) (citing SSR 96-8p) (“Generally, in order to be eligible for disability
 4 benefits under the Social Security Act, the person must be unable to sustain full-time work –
 5 eight hours per day, five days per week”). In addition, a disability claimant “should not be
 6 penalized for attempting to lead normal lives in the face of their limitations.” *Reddick*, 157
 7 F.3d at 722. Accordingly, the ALJ’s fifth reason for discounting Dr. Stricker’s opinion is not
 8 specific and legitimate and supported by substantial evidence.

9 For the above stated reasons, the Court concludes the ALJ failed to provide specific,
 10 legitimate reasons supported by substantial evidence for discounting Dr. Stricker’s opinion.
 11 Accordingly, the ALJ erred.

12 “[H]armless error principles apply in the Social Security context.” *Molina*, 674 F.3d at
 13 1115. An error is harmless, however, only if it is not prejudicial to the claimant or
 14 “inconsequential” to the ALJ’s “ultimate nondisability determination.” *Stout v. Comm’r, Soc.*
 15 *Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006); *see Molina*, 674 F.3d at 1115. The
 16 determination as to whether an error is harmless requires a “case-specific application of
 17 judgment” by the reviewing court, based on an examination of the record made “‘without
 18 regard to errors’ that do not affect the parties’ ‘substantial rights.’” *Molina*, 674 F.3d at 1118-
 19 1119 (quoting *Shinseki v. Sanders*, 556 U.S. 396, 407 (2009)).

20 Had the ALJ given great weight to Dr. Stricker’s opinion, the ALJ may have included
 21 additional limitations in the residual functional capacity (“RFC”). For example, Dr. Stricker
 22 opined Plaintiff would miss work more than once a week due to her conditions. AR 833. In
 23 contrast, in the RFC, the ALJ did not include any limitations regarding absenteeism. *See* AR 16.
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1 Therefore, if Dr. Stricker's opinion were given great weight and additional limitations were
2 included in the RFC and in the hypothetical questions posed to the vocational expert, the ultimate
3 disability determination may have changed. Accordingly, the ALJ's errors are not harmless and
4 require reversal. The ALJ is directed to reassess Dr. Stricker's opinion on remand.

5 **II. Whether the ALJ properly considered Plaintiff's testimony and the lay witness
6 testimony.**

7 Plaintiff asserts the ALJ improperly considered her testimony regarding her symptoms.
8 Dkt. 10, pp. 11-16. Plaintiff also asserts the ALJ improperly discounted the lay witness testimony.
9 *Id.* at pp. 16-17. The Court concludes the ALJ committed harmful error in assessing Dr. Stricker's
10 opinion and must re-evaluate it on remand. *See* Section I, *supra*. Because Plaintiff will be able to
11 present new evidence and new testimony on remand and because the ALJ's reconsideration of the
12 medical evidence may impact his assessment of Plaintiff's testimony and the lay witness
13 testimony, the ALJ must reconsider Plaintiff's testimony and the lay witness testimony on remand.

14 **CONCLUSION**

15 Based on the foregoing reasons, the Court hereby finds the ALJ improperly concluded
16 Plaintiff was not disabled. Accordingly, Defendant's decision to deny benefits is reversed and
17 this matter is remanded for further administrative proceedings in accordance with the findings
18 contained herein.

19 Dated this 14th day of September, 2020.

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22 David W. Christel
23 United States Magistrate Judge
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